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Third report on reservations to treaties

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Addendum

Recapitulatory annex to the Guide to Practice

523. This annex recapitulates the draft guidelines proposed by the Special Rapporteur in the context of the Guide to Practice in respect of reservations. The titles of the individual guidelines are proposed on a provisional basis.

GUIDE TO PRACTICE

1. DEFINITIONS

1.1 Definition of reservations

1.1 "Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

1.1.1 Joint formulation of a reservation

The unilateral nature of reservations is not an obstacle to the joint formulation of a reservation by several States or international organizations.

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1.1.2 Moment when a reservation is formulated

A reservation may be formulated by a State or an international organization when that State or that organization expresses its consent to be bound in accordance with article 11 of the 1969 and 1986 Vienna Conventions on the Law of Treaties.

1.1.3 Reservations formulated when notifying territorial application

A unilateral statement which is made by a State at the time of the notification of the territorial application of a treaty and by which that State purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the territory in question constitutes a reservation.

1.1.4 Object of reservations

A reservation may relate to one or more provisions of a treaty or, more generally, to the way in which the State intends to implement the treaty as a whole.

1.1.5 Statements designed to increase the obligations of their author

A unilateral statement made by a State or an international organization by which that State or that organization undertakes commitments going beyond the obligations imposed on it by a treaty does not constitute a reservation [and is governed by the rules applicable to unilateral legal acts], even if such a statement is made at the time of the expression by that State or that organization of its consent to be bound by the treaty.

1.1.6 Statements designed to limit the obligations of their author

A unilateral statement made by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty and by which its author intends to limit the obligations imposed on it by the treaty and the rights which the treaty creates for the other parties constitutes a reservation, unless it adds a new provision to the treaty.

1.1.7 Reservations relating to non-recognition

A unilateral statement by which a State purports to exclude the application of a treaty between itself and one or more other States which it does not recognize constitutes a reservation, regardless of the date on which it is made.

1.1.8 Reservations having territorial scope

A unilateral statement by which a State purports to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement constitutes a reservation, regardless of the date on which it is made.

1.1.9 "Reservations" to bilateral treaties

A unilateral statement formulated by a State or an international organization after signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty in respect of which it is subordinating the expression of its final consent to be bound, does not constitute a reservation, however phrased or named.

The express acceptance of the content of that statement by the other party takes the form of an amendment to the treaty, and both parties are bound by the new text once they have expressed their final consent to be bound.

1.2 Definition of interpretative declarations

"Interpretative declaration" means a unilateral declaration, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to clarify the meaning or scope attributed by the declarant to the treaty or to certain of its provisions.

1.2.1 Joint formulation of interpretative declarations

The unilateral nature of interpretative declarations is not an obstacle to the joint formulation of an interpretative declaration by several States or international organizations.

1.2.2 Phrasing and name

It is not the phrasing or name of a unilateral declaration that determines its legal nature but the legal effect it seeks to produce. However, the phrasing or name given to the declaration by the State or international organization formulating it provides an indication of the desired objective. This is the case in particular when a State or an international organization formulates several unilateral declarations in respect of a single treaty and designates some of them as reservations and others as interpretative declarations.

1.2.3 Formulation of an interpretative declaration when a reservation is prohibited

When a treaty prohibits reservations to all or some of its provisions, a unilateral declaration formulated in respect thereof by a State or an international organization shall be considered to constitute an interpretative declaration and not a reservation. If, however, the declaration seeks to exclude or modify the legal effect of certain provisions of the treaty in their application to its author, the declaration must be considered an impermissible reservation.

1.2.4 Conditional interpretative declarations

A unilateral declaration formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subordinates its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof, shall constitute a conditional interpretative declaration [which has legal consequences distinct from those deriving from simple interpretative declarations].

1.2.5 General declarations of policy

A unilateral declaration formulated by a State or an international organization when that State or international organization expresses its consent to be bound which does not purport to exclude or modify the legal effect of the treaty in its application to that State or that international organization, or to interpret it, constitutes neither a reservation nor an interpretative declaration [and is not subject to application of the law of treaties].

1.2.6 Informative declarations

A unilateral declaration formulated by a State or an international organization in which the State or international organization indicates the manner in which it intends to discharge its obligations at the internal level but which does not affect the rights and obligations of the other contracting parties is neither a reservation nor an interpretative declaration.

1.2.7 Interpretative declarations in respect of bilateral treaties

Guidelines 1.2, 1.2.2, 1.2.4, 1.2.5 and 1.2.6 are applicable to unilateral declarations made in respect of bilateral treaties.

1.2.8 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to the treaty and accepted by the other party constitutes the authentic interpretation of that treaty.

1.3 Distinction between reservations and interpretative declarations

[1.3.0 Criterion of reservations

The classification of a unilateral declaration as a reservation depends solely on the determination as to whether it purports to exclude or to modify the legal effect of the provisions of the treaty in their application to the State or international organization that formulated it.]

[1.3.0 *bis* Criterion of interpretative declarations

The classification of a unilateral declaration as an interpretative declaration depends solely on the determination as to whether it purports to clarify the meaning or the scope that the declarant attributes to the treaty or to certain of its provisions.]

[1.3.0 *ter* Criterion of conditional interpretative declarations

The classification of an interpretative declaration as a conditional interpretative declaration depends solely on the determination as to whether the declarant intended to subordinate its consent to be bound by the treaty to the interpretation that is the subject of the declaration.]

1.3.1 Method of distinguishing between reservations and interpretative declarations

To determine the legal nature of a unilateral declaration formulated by a State or an international organization in respect of a treaty, it is appropriate to apply the general rule of interpretation of treaties set out in article 31 of the Vienna Convention on the Law of Treaties.

Recourse may be had to the supplementary means of interpretation contemplated in article 32 of the Convention in order to confirm the determination made in accordance with the preceding paragraph, or to remove any remaining doubts or ambiguities.

1.4 Scope of definitions

Defining a unilateral declaration as a reservation or an interpretative declaration is without prejudice to its permissibility under the rules relating to reservations and interpretative declarations, whose implementation they condition.